

TITLE 18. FRANCHISE TAX BOARD

As required by Section 11346.4 of the Government Code, this is notice of the intention to amend Section 23334 in Title 18 of the California Code of Regulations, which explains that to complete the dissolution, withdrawal, or merger process with the California Secretary of State, a corporation must obtain a tax clearance certificate from the Franchise Tax Board and file it with the Secretary of State. There will not be a public hearing unless one is requested by an interested person at least 15 days before the close of the written comment period. Any request for a public hearing should be submitted to the Regulation Coordinator specified herein.

WRITTEN COMMENT PERIOD

Written comments will be accepted until 5:00 p.m., February 21, 2000. All relevant matters presented will be considered before the proposed regulatory action is taken. Comments should be submitted to the Regulation Coordinator specified herein.

AUTHORITY & REFERENCE:

Section 19503 of the Revenue and Taxation Code authorizes the Franchise Tax Board to prescribe regulations necessary for the enforcement of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), Part 10.7 (commencing with Section 21001) and Part 11 (commencing with Section 23001 of the Revenue and Taxation Code). The proposed regulatory action interprets, implements, and makes specific Section 23334 of the Revenue and Taxation Code.

INFORMATIVE DIGEST/PLAIN ENGLISH POLICY STATEMENT OVERVIEW:

Section 23334 of the Revenue and Taxation Code and the corresponding Regulation currently provide that no dissolution, withdrawal (or surrender by a foreign corporation), will be allowed until the Franchise Tax Board has issued a tax clearance certificate. The tax clearance certificate indicates that from the available evidence all corporate franchise taxes have been paid or have been secured by bond, deposit, or otherwise. The tax clearance certificate does not relieve the taxpayer, individual, corporation (or credit union which revokes its election to wind up and dissolve), from liability for any taxes, penalties, or interest imposed by the Bank and Corporation Tax Law.

The proposed regulatory action clarifies that a dissolving or withdrawing corporation remains subject to the minimum franchise tax until a tax clearance certificate has been obtained from the Franchise Tax Board, filed with the Secretary of State, and the dissolution, withdrawal, or merger has been completed. In addition, the proposed regulatory action clarifies that the Franchise Tax Board cannot issue a tax clearance certificate to a suspended or forfeited corporation.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed under Part 7, commencing with Government Code Section 17500, of Division 4: None.

Other non-discretionary cost or savings imposed upon local agencies: None.

Cost or savings in federal funding to the state: None.

Adverse Economic Impact on business including the ability of California businesses to compete with businesses in other states: None.

Cost to directly affected private persons/businesses potential: None.

Significant effect on the creation or elimination of jobs in the state: None.

Significant effect on the creation of new businesses or elimination of existing businesses within the state: None.

Significant effect on the expansion of businesses currently doing business within the state: None.

Effect on small business: The effect on small business would be negligible. The proposed regulatory action clarifies that a dissolving or withdrawing corporation remains subject to the minimum franchise tax until the dissolution, withdrawal, or merger process has been completed. Any effect on small business would be to their benefit, as the proposed regulatory action clarifies what steps need to be taken to obtain and file a tax clearance certificate to avoid additional taxes and penalties. The express terms of the proposed action written in plain English are available from the agency contact person named in this notice.

Significant effect on housing costs: None.

CONSIDERATION OF ALTERNATIVES:

In accordance with Government Code Section 11346.5(a)(12), the Board must determine that there are no alternatives considered which would be more effective in carrying out the purpose of the proposed regulatory action or would be as effective and less burdensome to affected private persons or small businesses than the proposed regulatory action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS:

The express terms of the proposed regulatory action, written in plain English, as well as the initial statement of reasons and all information upon which the proposed regulatory action is based, are available upon request from the Regulation Coordinator specified herein.

CHANGE OR MODIFICATION OF ACTIONS:

The proposed regulatory action may be adopted after consideration of any comments received during the comment period.

The proposed regulatory action may also be adopted with modifications if the changes are nonsubstantive or the resulting regulation is sufficiently related to the text made available to the public so that the public was adequately placed on notice that the proposed regulatory action as modified could result from that originally proposed. The text of the proposed regulatory action as modified will be made available to the public at least 15 days prior to the date on which the proposed regulatory action is adopted. Requests for copies of any modifications to the proposed regulatory action specified in this notice should be sent to the attention of the Regulation Coordinator specified herein.

ADDITIONAL COMMENTS:

If an oral public hearing is held, the hearing room will be accessible to persons with physical disabilities. Also, any person who is in need of a language interpreter, including sign language, should contact the Regulation Coordinator specified herein at least two weeks prior to the hearing so that the services of an interpreter may be arranged.

CONTACT:

All inquiries concerning this notice or the hearing should be directed to the Regulation Coordinator for this proposed regulatory action, Colleen Berwick, at the Franchise Tax Board Legal Branch, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Tel.: (916) 845-3306; Fax: (916) 845-3648; E-Mail: colleen_berwick@ftb.ca.gov.